IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.172 OF 2006

Ravindra Suryakant Walvekar
and Anr. .. Appellants.
Vs.
M/s.Avinash Constructions & Ors .. Respondents.

Mr.N.J.Patil for the appellants.

CORAM : D.B.BHOSALE, JJ.
DATED : 5TH JULY, 2007.
P.C.:

. Heard learned counsel for the appellants.

2. The suit was filed for specific performance of contract and in the alternative for refund of consideration amount of Rs.10,000/- paid to defendant no.1 as earnest money. The trial Court partly decreed the suit and directed defendant no.1 to pay Rs.10,000/- with interest. It appears that all the issues are answered in favour of the appellants. However, issue no.4, namely, whether respondent no.3 (i.e. defendant no.3) prove that he is a bonafide purchaser of the suit shop for value without notice, has been answered in the affirmative by both the courts below. The relief of specific performance being discretionary in nature, the courts below seem to have exercised it judiciously and refused a decree of specific performance in view of its findings on issue no.4 and held that the appellant is

entitled to recover an amount of Rs.1,00,000/- from defendant - respondent no.1 for breach of oral agreement. Considering the findings of fact recorded by the courts below and as I find sufficient material on record to sustain those findings and considering that substantial justice has been done by the courts below by exercising the discretion judiciously this second appeal does not deserve to be admitted. Moreover, no substantial question of law is either raised or involved in the appeal. In the circumstances the second appeal is dismissed.

(D.B.BHOSALE, J.)